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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,633	09/16/2003	Franz Deitering	11884/407601	9755
53000 7590 05/13/2009 KENYON & KENYON LLP 1500 K STREET N.W. WASHINGTON, DC 20005				
EXAMINER KARDOS, NEIL R				
ART UNIT		PAPER NUMBER		
3623				
MAIL DATE		DELIVERY MODE		
05/13/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/662,633

**Applicant(s)**

DEITERING ET AL.

**Examiner**

Neil R. Kardos

**Art Unit**

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 21, 22, 24-30 and 32-35 is/are pending in the application.
- 4a) Of the above claim(s) 14-20 and 36-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 21, 22, 24-30 and 32-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

This is a **NON-FINAL** Office Action on the merits in response to the request for continued examination filed on April 15, 2009. Currently, claims 1-11, 21, 22, 24-30, and 32-35 are pending.

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 27, 2009 has been entered.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Response to Amendment***

Applicant's amendments to claim 1 are sufficient to overcome the rejection under § 101 as set forth in the previous Office Action. Accordingly, the § 101 rejection has been withdrawn.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3, 5, 7-11, 21, 22, 24-30, 32, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Havens (US 5,909,669) in view of Sanders (US 6,411,936) and Might (US 6,766,319), and further in view of Nation (US 2007/0203786).**

Claim 1: Havens discloses a computer-implemented business objective evaluation method, comprising:

- generating a target group of users for a survey using a computer, wherein each user of the target group has a user profile stored in a database device (see col. 2: ln. 7-13, disclosing limiting survey-based assessments to selected workers; col. 4: ln. 18-41, disclosing targeting workers, peers, managers, and supervisors; col. 5: ln. 58-61; col. 6: ln. 4-17, disclosing worker profiles; col. 11: ln. 28-49);
- aggregating survey results data with other business data into a business information warehouse, wherein the other business data is acquired via means other than the survey (see figure 2: items 12-18; col. 6: ln. 18-57, disclosing aggregating survey results data with benchmark data)
- receiving an indicator of business performance via an input device of the computer (see col. 6: ln. 58 through col. 7: ln. 5; col. 7: ln. 22-57; col. 8: ln. 10-25; col. 12: ln. 17-27; col. 1: ln. 14-22 and 27-29);

- responsive to the indicator of business performance, extracting a segment of survey results data corresponding to the indicator (see col. 6: ln. 58 through col. 7: ln. 5; col. 7: ln. 22-57; col. 8: ln. 10-25; col. 12: ln. 17-27; col. 1: ln. 14-22 and 27-29)
- comparing the extracted segment to an aggregate set of survey results data (see col. 6: ln. 33-57; col. 8: ln. 10 through col. 9: ln. 22, describing the comparator; col. 13: ln. 38-55);
- identifying any survey results data from the extracted segment that statistically differ from responding results data from the aggregate set by a predetermined amount (see col. 7: ln. 36-49; col. 8: ln. 26-49; col. 9: ln. 9-43, disclosing identifying disparities with respect to a standard deviation);
- linking the identified statistically different survey results data to business key values in the business information warehouse (see col. 7: ln. 22-57; col. 8: ln. 26 through col. 9: ln. 43; Specifically, col. 9: ln. 23-43, disclosing linking disparities to productivity).

Havens does not explicitly disclose E-surveys. However, Examiner takes Official Notice that E-surveys were old and well-known in the art at the time the invention was made. Thus, the elements and their functions are known in the prior art, albeit in separate references (or in this case, the Havens reference and Official Notice). The difference between the claimed subject matter and the prior art rests not on any individual element or function, but on the combination itself. That is, in the substitution of E-Surveys as known in the art for paper surveys as disclosed

by Havens. The simple substitution of one known element for another producing a predictable result renders the claim obvious.

Havens also does not explicitly disclose determining whether objectives of strategic enterprise management planning are being met. Presumably the worker productivity assessment described by Havens is undertaken in order to improve worker productivity, which would likely be an objective of a strategic management plan. Sanders discloses using surveys (see e.g. col. 13: ln. 6-15; col. 14: ln. 5-10) in conjunction with performance metrics (see e.g. col. 14: ln. 41-54) and key value drivers (see e.g. col. 12: ln. 28-57) in order to meet strategic planning objectives (see e.g. col. 2: ln. 5-23; fig. 5: item 509; col. 13: ln. 45-49; col. 14: ln. 31-54; col. 15: ln. 4-17). Havens and Sanders both relate to improving a business through the use of surveys. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the methodology of Havens to determine whether strategic objectives are being met, as taught by Sanders. One of ordinary skill in the art would have been motivated to do so for the benefit of improving productivity and efficiency (see Sanders: col. 8: ln. 18-22).

Further, Havens does not explicitly disclose determining each user of the target group having access to the E-survey by comparing, by the computer, a class identifier with each user profile. Might teaches this limitation. (see figures 4-5; column 3: lines 44-46; table 1; column 14: lines 1-19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the methods taught by Might to control who has access to the surveys of Havens. One of ordinary skill in the art would have been motivated to do so for the benefit of obtaining only relevant survey responses.

Finally, Havens does not explicitly disclose wherein the other business data includes sales data, turn over rate, and illness rate. Nation discloses aggregating survey data and other data (see e.g. ¶ 92), wherein the data includes sales data (see table 1: "Performance Management" Category: "Revenue/Employee" Metric Title), turn over rate (see table 1: "Employee Satisfaction" Category: "Turnover" Metric Title), and illness rates (see table 1: "Performance Management" Category: "Sick days" Metric Title). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the data disclosed by Nation with the survey methodology of Havens. One of ordinary skill in the art would have been motivated to do so for the benefit of obtaining the most relevant data and to receive accurate results. Furthermore, this combination of known elements retains the functionality of the separate elements and produces a result that would be predictable to one of ordinary skill in the art.

Claim 2: Havens discloses wherein the indicator identifies an organizational unit of a business experiencing anomalous performance (see col. 7: ln. 22-57, disclosing segmenting parameters of surveys via numerical range; col. 8: ln. 26 through col. 9: ln. 8).

Claim 3: Havens suggests wherein the indicator identifies a period of time (see col. 1: ln. 27-29).

Claim 5: Havens discloses wherein the indicator is a key performance indicator (see col. 7: ln. 22-57, disclosing segmenting parameters of surveys including worker criteria and information criteria).

Claim 7: Havens discloses wherein the indicator is an employee satisfaction indicator (see at least col. 4: ln. 33-37).

Claim 8: Havens discloses wherein the aggregate set is survey results data for a business and the extracted segment is a portion of the aggregate set (see col. 6: ln. 18-57).

Claim 9: Havens suggests wherein the aggregate set is survey results data for a market in which the business participates (see col. 1: ln. 19-22; col. 6: ln. 18-57).

Claim 10: Havens discloses comparing the extracted segment of survey results data to historical data (see col. 6: ln. 33-39).

Claim 11: Havens discloses comparing the extracted segment of survey results data to external benchmarks (see col. 6: ln. 18-57).

Claims 21, 24, 27, and 30: Claims 21, 24, 27, and 30 are substantially similar to claim 1, except that they are directed to a system. Havens discloses such a system (see e.g. figure 2; col. 10: ln. 9-22). Thus, claims 21, 24, 27, and 30 are rejected under similar rationale as claim 1.



Claim 22: Havens does not explicitly disclose wherein the output manager is to permit access to the generated result based on pre-determined access rights. However, Examiner takes Official Notice that it was well-known in the arts at the time the invention was made to grant permission to information based on access rights (e.g. via a login password). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to protect the information reported in Havens by using pre-determined access rights as is well-known in the art. One of ordinary skill in the art would have been motivated to do so for the benefit of increased security.

Claim 25: Claim 25 is substantially similar to claim 8 and is rejected under similar rationale.

Claim 26: Claim 26 is substantially similar to claim 9 and is rejected under similar rationale.

Claim 28: Claim 28 is substantially similar to claim 10 and is rejected under similar rationale.

Claim 29: Claim 29 is substantially similar to claim 11 and is rejected under similar rationale.

Claims 32 and 34: Claims 32 and 34 are substantially similar to claims 3 and 5, respectively, and are rejected under similar rationale.

**Claims 4, 6, 33, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Havens in view of Sanders, Might, and Nation, and further in view of Nelson (US 7,233,908).**

Claims 4 and 6: Havens, Sanders, and Might do not explicitly disclose wherein the indicator identifies a geographic region (claim 4) or customer satisfaction (claim 6).

Nelson discloses wherein the indicator identifies a geographic region (see col. 5: ln. 60-62, disclosing comparing regions; figure 9: item 292; col. 6: ln. 6, disclosing comparing satisfaction by site) and wherein the indicator is a customer satisfaction indicator (see figures 8 and 11).

Havens, Sanders, Might and Nelson are all directed to conducting surveys for evaluative purposes. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the indicators taught by Nelson for the purpose of comparative evaluations as taught by Havens. One of ordinary skill in the art would have been motivated to do so for the benefit of increased flexibility and adaptability in the comparison process.

Claims 33 and 35: Claims 33 and 35 are substantially similar to claims 4 and 6, respectively, and are rejected under similar rationale.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Santos (US 2003/0167192), directed to monitoring and analyzing data trends within an organization, including employee turnover and illness rates (§ 6)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil R. Kardos whose telephone number is (571) 270-3443. The examiner can normally be reached on Monday through Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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